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THE CASE AGAINST NATHAN B. SCOTT.

Interesting Statement as to His Ineligibility to a Seat in the United States Senate.

From the Fairmont Index.

The brief in the case of John T. McGraw and forty-nine members, composing a majority, of the last Legislature, remonstrating against the seating of N. B. Scott as a Senator from West Virginia, has been filed in the United States Senate.

There are five reasons assigned why Mr Scott is not legally entitled to be seated in the Senate under what purported to be an election by the joint assembly of the last Legislature, any one of which if sustained by the facts will, under the precedents heretofore established by the Senate, prevent him from being seated in that body.

The first reason assigned is that Mr Scott did not receive a majority of the votes of all members elected to both houses of the Legislature, as seems to be required under the act of Congress regulating such elections. The argument upon this point is not so conclusive as on some other points raised in the case, yet it is a fact that no senator has ever been seated who failed to obtain the votes of a majority of all the members elected to both branches of the Legislature at the first session of the joint assembly. There were 97 members elected to both branches of the Legislature, and only 95 were permitted to vote. Of these Mr Scott received 48 votes, Mr McGraw 46, and Judge Goff 1. The contention on this point is that while Mr Scott received a majority of the 95 who were allowed to vote, he did not receive a majority of the 97 who were elected and entitled to vote. A somewhat similar case arose from Kentucky a few years ago. Owing to the death of a Democratic member of the Legislature the Republicans secured a majority of those remaining and elected Dr Hunter by this majority; but though he had a majority of the members remaining in the joint assembly, he did not have —as Scott did not have—a majority of all elected, two of them being dead. The Governor of the state took the position that he was not therefore elected, tho he had been declared elected by the president of the joint assembly, and he refused to give him a certificate of election. Dr Hunter applied to the supreme court for a mandamus to compel the Governor to certify his election. The supreme court denied the writ, and Hunter took his case to the senate upon the record of the action of the joint assembly. Upon reaching Washington and conferring with a number of senators of his own party, he was informed that it was useless to press his case; that the fact that he had not received a majority of all the members elected to both branches of the Legislature was fatal to his claim, and that the only thing he could do was to go back to his State and wait until these vacancies were filled and secure a re-election. Under this advice he abandoned his claim, and when the vacancies were filled the Legislature went into another election, and Senator Deboe, a Republican, was elected, and is still in the senate under such election. This is perhaps as near a precedent as has been established on this point.

The second point raises the question of the eligibility of the two war senators, and challenges their right to vote in the joint assembly.

Mr Scott relies upon the action of the state senate as to these two men as being final and conclusive under that provision of the constitution which says that each branch of the legislature shall be the sole judge of the qualification, election, and returns of its members, and his contention will no doubt be that the state senate having passed upon their quailfication, election, and returns, the United States Senate will regard that as conclusive and refuse to go into the question of their eligibility at the time of the meeting of the joint assembly. But the precedents have been the other way where the question of a proper interpretation of the constitution of a state bearing on the eligibility of members of a legislature has arisen. The Dupont case from Delaware is a case substantially like this. In that case, the president of the senate had become acting Governor by reason of the death of the Governor. Under the constitution of Delaware, a member of the Legislature could not hold any other lucrative office under the state Government, but it was claimed for him that inasmuch as he was a member of the state senate, and was only acting Governor by virtue of being president of the senate, he did not thereby vacate his seat as a state senator, and might vote in the joint assembly. He did so and his vote made the necessary majority to Dupont, just as the votes of Getzandamer and Pierson made the necessary majority for Scott. The United States senate in that case passed upon the question of the eligibility of the acting Governor to vote in the joint assemby as a Senator, decided that under the constitution of Delaware he had no such right, and refused to receive Dupont as a senator. There is a wide distinction between the right of a branch of the legislature to pass upon the election of its members and its right to determine whether or not a vacancy exists in its body under the constitution of the state. In the one case it is a question of fact involving the details of an election and returns. In the other it is a question of the construction of a constitutional provision, under which, as the senate said in the Dupont case, "its action determines great constitutional rights—the title of an individual to a high office and the title of a sovereign state to be represented in the senate by a person of its choice," in which case "the senate is to declare a result depending upon the application of law to existing facts, and is not to be affected by the desire of its members or by their opinions as to public policies or public interest." In other words, while the state senate might have unseated Kidd, who was elected, and given his seat to Morris, who was not elected, and the United States would refuse to inquire into the facts of that action or take cognizance of the fraud involved in it, on the the theory that the state senate was the sole judge of the qualification, election, and returns of its members, when a question of law arises affecting the eligibility of members under the constitution whose votes give "title to an individual to a high office," that body will inquire into the law of the matter, and if it be found that they were ineligible, as the acting Governor of Delaware was found to be ineligible, it will refuse to give Scott a seat, as it refused to give Dupont a seat in that body. As to whether or not Getzandenner and Pierson vacated their seats by accepting commissions in the army, there has never been a question among lawyers on that point. Even the Governor and every Republican lawyer in the senate will admit, if pressed to that point, that it was only party exigency that made it possible for those senators to be received back into the senate after having clearly vacated their senatorial offices under section 13 of article 6 of the Constitution.

The third point alleges that the vote Scott received was brought about by threats and intimidation on the part of Republicans in the senate, who threatened to throw out, illegally and without cause, several senators duly elected by the people, unless the Democrats of the House should accede to their demands, and that by reason of these threats and in consequence of a partial carrying out of the same by the unseating of R. F. Kidd, in order to prevent the disfranchisement of these senatorial districts, the Democrats went, under duress, into the joint convention.

The testimony filed with the brief not only fully substantiates this allegation but shows that there was a deep laid conspiracy on the part of the state administration, the senate, and a number of republican members of the House, to compel the regular organization of the House to abandon its constitutional right to try its election contest on their merits, or have all the hold-over democratic senators thrown out, a rump house organized, and the regular organization of the House dispersed by force if necessary. Thus was one independent part of a co-ordinate branch of a state government coerced into abondoning its rightful privileges, and robbed of the power given it by the constitution to settle its own election contests. All the principi of a fair election for United States senator were subverted by this conspiracy and the threats and show of force which accompanied it. The citations in support of the invalidity of an election under such circumstances are numerous and show conclusively that such fraud and intimmidation vitiate the election.

The fourth point alleges that the agreement entered into between a few republicans of the senate and democrats of the house by which it was agreed that the seats of Senator Kidd and Delegate Dent should remain vacant until after the election for Senator, and which agreement was ratified by both Houses, was void as against public policy, and vitiated said election and all acts done under it.

An acquiescence in this agreement was necessary on the part of the Democrats to preserve the seats of the r hold-over senators, but it is stated in the brief that "All authorities agree that an agreement of this nature is void, as against public policy, and that all acts done under it are absolutely void. There has never been such a case brought before the United States senate, but similar cases in principle have been decided in the House of Representatives and in the courts of the country, and never yet has such an agreement been held valid or any action held under such an agreement been sustained. To hold that one senatorial district and one county can be deprived of their votes under a private agreement, ratified by the two Houses, would be to hold that all counties and all senatorial districts could be disfranchised and the elections held entirely under a private agreement ratified by the Legislature." A Legislature can not delegate its powers to a few individuals in that way, nor can it by the ratification of such an agreement disfranchise a member and take away from him the delegated power he had from his constituents to vote for them on the election of a Senator. "There has never been a case in any court or in any legislative body when any voter, whether he a private citizen or an official with the right to vote, has been deprived of his vote, either under an agreement or by legislative action, and that deprivation of a vote been sustained."

The fifth point is that at the time of the pretended election, said Scott was a citizen but not an inhabitant of the State of West Virginia, as required by the constitution of the United States. He was an inhabitant of the District of Columbia where he lived and held office.

At first glance it would seem that the distinction here created between a citizen and inhabitant is trivial, for to most people the words appear to be synonymous terms. But they are not. The distinction in their meaning has been passed upon twice in similar cases to this, and in both cases it was held that an individual could be a citizen of a State and yet not an inhabitant in the sense contemplated by the constitution in fixing the qualifications for Senators and members of the House of Representatives.

The first case in which this question arose was in the House of Representatives in 1824, and that case is exactly similar to the one under discussion. Mr Bailey was a citizen and resident of Massachusettes. He was appointed as chief clerk in the office of the Secretary of State at Washington, and removed to a hotel there. It was not claimed that he ever attempted to exercise the rights of a citizen at Washington. On the contrary, Mr John Q. Adams, at that time Secretary of State, testified that he always understood that Mr Bailey considered Massachusettes as his home, and that his residence in Washington was only temporary. Under the impression that he retained his citizenship in Massachusetts, Mr Bailey became a candidate for Congress at his home there and was elected. The question of his eligibility was raised in the House on the ground that while he was a citizen, he was not an inhabitant of Massachusetts, but was an inhabitant of the District of Columbia where he temporarily resided. The committee to whom the case was referred made an exhaustive report, going into an explanation of the reasons why the framers of the constitution used the word "inhabitant" instead of citizen or resident in fixing the qualifications of Senators and Representives, and showed that one of their objects was to prevent the election of men who by reason of living away from constituences were not in that touch with the wishes and sentiments of the people so necessary in a representative, and that especially should office holders living at the seat of National Government and necessarily in a large measure under the control of the National Administration be debarred from election as the representative of a State in either the House or the Senate. In short, had the report been made on Mr Scott's case it could not have fit more precisely in every detail that arises under the objection. The report rejected Mr Bailey and was adopted by an overwhelming majority; such able constitutional lawyers as Webster and Tucker, of Virginia, supporting it.

The second case was decided by the Senate and is the converse of the House case. Adelbert Ames was a citizen of Massachusettes. During the reconstruction period, he was appointed provisional governer of Mississippi by the President. While acting as such, he was elected to the United States Senate by the reconstruction legislature. The question of his eligibility was raised on the ground that he was not a citizen of Mississippi, but a citizen of Massachusetts. The Senate held that tho' he was a citizen of Mass he was an inhabitant of Mississippi by reason of his residence there, and therefore was eligible to a seat in the Senate from that State.

These points and the facts connected with them make up a strong case against Mr Scott's admission.

If the constitution, with the interpretation heretofore given it by both branches of Congress is to have any weight in shaping the conclusion of the Senate he will not get a seat in that body.

If the constitution of West Virginia can impose any obligation on the Legislature to purge itself of the men who have no legal right to participate in its functions, and the senate take cognizance of that fact as it did in the Dupont case it will refuse to admit him.

If the denial of the right of legally elected members to have any vote in the deliberations of the legislature, impairs an election where the vote was material to such an election, he will not be seated.

If coercion and threats of violence, and an actual state of duress established over one branch of the legislature by the State administration and the other branch, can ever vitiate an election he will not be seated.

If the constitution and the law and the precedents heretofore observed by the senate have any weight whatever in influencing the votes of the Republican senators, then Mr Scott will be rejected.

But notwithstanding the very strong case made against him—a case which would be fatal to the admission of any Democrat from any State in the Union—Mr Scott has complacently assured the public from time to time that there was absolutely no doubt but that he would be seated. He has felt assured from the beginning the constitution and the laws and all precedents would be overridden to give him a place in the senate. But he may be mistaken in this. The assurance from which his complacency proceeds may arise from either of two causes. It may be ignorance, or it may be from a mistaken notion on his part of the kind of men who compose to some extent the membership of the senate. From the swaggering insolence of his newly acquired wealth Mr Scott has probably not had opportunity to become intimately acquainted with a number of Senators on the Republican side of the senate who put the man before the dollar and the constitution and the law before partisanship. In his connexion with the Republican politics of West Virginia he has probably found that many political favors of various kinds are easily purchasable in various ways, not the least of which has been a pretended election to the United States Senate: and with his experience in that kind of politics he would be enabled, with the splendid effrontery of his nature, to look even the Almighty in the face ond propose to purchase his good will and favor in any political case in which he has an interest. But we hope he may be mistaken in his conception of even Republican Senators. We hope there may be some men and lawyers among them who have integrity and capacity to rise above the pitiful character of this kind of politics and decide the case on its merits. If a few of them do this Mr Scott will never be a Senator from the State of West Virginia, and most of the citizens of the state of both political parties will rejoice when that is an assured fact.

In this case Mr McGraw can derive no personal benefit. He can only hope to bring the matter to the attention of the Senate that it may emphasize the condemnation that the people of the State have passed upon Scott and his fellow conspirafors in their highhanded and revolutionary attempt to rob the people's representatives of their legal powers in the election of a senator. No decision of the Senate can give him the place, but he is moved to prosecute the matter so that such rebuke may be given such outrageous methods as will assure for the future that elections for senators will be conducted under the forms of law and not through schemes of bulldozing, terrorism, and fraud.

The cow kicked the bucket over and spilled the milk, and if you do not get the Farm Journal 5 years, (all of 1900, 1901, 1902, 1903, and 1904,) just by paying for The Pocahontas Times a year ahead, you will be like that cow. The Farm Journal is the biggest paper of its size in the world.

INVENTOR IN THE LIQUOR WARD.

His Specialty, He Explains, Is to Keep the Woman's Hats on Straight.

The Eldridge street station was stirred up by a prisoner early Monday morning. He was a big wiry fellow with long whiskers and soft white hands.

"Sir!" he said to the sergeant, "Isn't this an outrage? I, a respectable man, a renowned inventor, treated in this scurvy fashion!"

Five big policemen who had brought him in wiped their foreheads and their helmet bands.

"What did you ever invent?" asked the sergeant in his gentlest voice, for the inventor looked a man to be humored.

"What!" exclaimed the prisoner, "not know me? Not know my invention? Why, it was my patent which enabled every woman to tell when her hat was on straight without pestering the life out of everybody."

"Is there such a thing?" the inventor, two wardmen and five policemen yelled in unison. 'Where can I get 'em?"

The prisoner did not notice the question. "Yes! If I hadn't invented that I wouldn't have been where I am. I was the man who first thought of putting a spirit level under the brim of woman's hats.

"Where can I get a doz n?" the sergeant asked.

"Don't ask me!" the man said "I'm from Chicago!" then he burst into tears. He wouldn't tell anything about himself, but from cards in his pockets he was registered as "George Hodges, 46 years old, inventor; no home. The policeman said the brought him from a Bowery shooting gallery, where he had been doing some fancy shooting with the result that everybody around dodged behind anything there was in the way of shelter.

"Call up Bellevue," said the sergeant when he had entered "alcoholism" after the name in the blotter and, in half an hour the inventor was on his way there, protesting to the ambulance surgeon that it was not his fault if the women were all cross eyed watching his spirit levels.—New York Sun.

Mr Hennessy on the Boer.

Mr Dooley's theory of the Boer war in Africa seems to be as shrewd a commentary as any that has appeared. The few paragraphs from his latest colloquy with Mr Hennessy on current topics that follows are taken from the Pittsburg Dispatch:

"An' what's it all about?" demanded Mr Henneasy. "I can't make head nor tail iv it at all at all."

"Well, ye see, 'tis this way," said Mr Dooley. "Ye see th' Boers is a simply, pasthral people that goes about their business in their own way, raising hell with ivrybody.

"Kruger, that's th' main guy iv the Dutch, a fine man, Hinnissy, that looks like Casey's goat, an has manny of th' same peculyarities, ne says, 'All r right,' he says. 'I'll give them th' franchise,' he says. 'Whin?' says Joe Chamberlain. 'In me will,' says Kruger. 'Whin I die,' he says.

"An' there they go, Hinnessy. I 'm not again' England in this this thing, Hinnissy, and I'm not again' th' Boers. Like Mack I'm divided on a matter iv principle between a desire to cement th' 'lience an' an affection f'r th Dutch vote. But if Kruger had spint his life in a rale republic where they burn gas he cud've settled th' business without losin' sleep. If I was Kruger they'd 've been no war."

"What wud ye have done?" Mr Hennessy asked.

"I'd give thim th' votes," said Mr Dooley. "But," he added significally, "I'd do th' countin'."

Young Couple's Predicament.

Some time ago a young bridal couple stopped at a metropolitan hotal on their honeymoon, and accompaning them was an Irish valet who had been for years in the employ of the bridegroom.

The latter had instructed his valet not to tell any of the servants at the hotel that they were newly married and on their honeymoon, as the young bride was very sensitive and did not care to encounter the notice and stares which would be sure to be forthcoming.

Notwithstanding these instructions, the young couple found that they seemed to be the entire attraction, and the waiters, porters and bellboys ogled the young woman until she felt positively uncomfortable.

The bridegroom therefore blamed the valet and supposed that he had disobeyed his instructions.

Calling him before him he said severely, "Tim, I thought I told you not to tell anybody that we were newly married."

"Sure, sorr, an' I tould thim all you wuzzent married."—Ex.

CARELESS CONTENT.

I am content, I do not care.
Wag as it will the world for me;
When fuss and fret was all my fare,
It got no ground as I could see:
So when away my caring went,
I counted cost, and was content.

With more of thanks and less of thought
I strive to make my matters meet;
Th seek what ancient sages sought,
Physic and food in sour and sweet:
To take what passes in good part,
And keep the hiccups from the heart.

With good and gentle-humored hearts,
I choose to chat where're I come,
Whate'er the subject be that starts;
But if I get among the glum,
I hold my tongue, to tell the truth,
And keep my breath to cool my broth.

For chance or change of peace or pain,
For Fortune's favor or her frown,
For lack or glut, for loss or gain,
I never dodge, nor up nor down:
But swing what way the ship shall swim
Or tack about with equal trim.

I suit not where I shall not speed,
Nor trace the turn of every tide;
If simple sense will not succeed,
I make no bustling, but abide:
For shining wealth, or scaring woe,
I force no friend, I fear no foe.

Of ups and downs, of ins and outs,
Of they're i' the wrong, and we're i' the right,
I shun the rancours and the routs;
And wishing well to every wight,
What ever turn the matter takes,
I deem it all but ducks and drakes.

With whom I feast I do not fawn.
Nor if the folks should flout me faint:
If wonted welcome be withdrawn,
I cook no kind of a complaint:
With none disposed to disagree,
But like them best who best like me.

Not that I rate myself the rule
How all my betters should behave;
But fame shall find me no man's fool,
Nor to a set of men a slave:
I love a friendship free and frank,
And hate to hang upon a hank.

Fond of a true and trusty tie,
I never loose where'er I link;
Though if a business budges by,
I talk thereon just as I think:
My word, my work, my heart my hand
Still on a side together stand.

If names or notions make a noise,
Whatever hap the question hath,
The point impartially I poise,
And read or write, but without wrath
For should I burn or break my brains
Pray, who will pay me for my oains?

I love my neighbor as myself,
Myself like him too, by by his leave;
Nor to his pleasure, power or pelf,
Came I to crouch, as I conceive:
Dame Nature doubtless has designed
A man the monarch of his mind.

Now taste and try this temper, sirs;
Mood it and brood it in your breast
Or if ye ween for wordly stirs,
That man does right to mar his rest,
Let me be deft and debonair
I am content, I do not care.—Byrom